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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 150

NICOLAE MALAXA,

Petitioner,

v.

ROBERT F. KENNEDY, Attorney General of the United States,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

HENRY I. FILLMAN,
120 Broadway,
New York, N. Y. 10005,
Attorney for Petitioner.

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IN THE

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No. .....

NICOLAE MALAXA,

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ROBERT F. KENNEDY, Attorney General of the United States,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Nicolae Malaxa, respectfully prays that a writ of certiorari issue to the United States Court of Appeals for the District o Columbia Circuit to review the judgment of that court made and entered in this case on March 6, 1964, which affirmed an order of the Acting Director, Office of Alien Property, finding that petitioner is not eligible to receive a return of vested property under either Section 207(b) or Section 207(c) of the International Claims Settlement Act of 1949, as amended, 69 Stat. 564-565, 22 U.S.C.A. § 1631f(b,c), and dismissing and disallowing petitioner's claim for the return of his property (R. 13).

Opinion Below

The Court of Appeals for the District of Columbia Circuit rendered no opinion.

Jurisdiction

The date of the judgment of the Court of Appeals for the District of Columbia Circuit sought to be reviewed is March 6, 1964, and said judgment was entered on March 6, 1964. A copy thereof is appended hereto in the Appendix, *infra*, page 17.

The Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U.S.C. § 1254(1), 28 U.S.C.A. § 1254(1), confers on this Court jurisdiction to review said judgment of the Court of Appeals for the District of Columbia Circuit by writ of certiorari.

Questions Presented

1. Whether Article 27 of the Treaty of Peace with Rumania, 61 Stat. 1812, 1813-1814, concluded on February 10, 1947, which specifically excludes from vesting the blocked property within the United States of Rumanian nationals permitted to reside within the United States, was abrogated by Public Law, 285, 84th Cong., 1st Sess., 69 Stat. 562, 22 U.S.C.A. § 1631, approved on August 9, 1955, which amended the International Claims Settlement Act of 1949, 64 Stat. 12, 22 U.S.C.A. § 1621.

2. Whether Congress intended by Public Law 285, 84th Congress, 1st Sess., approved on August 9, 1955, that blocked property within the United States belonging to natural persons of Rumanian nationality should be excluded from the vesting program authorized thereunder.

3. Whether the Acting Director, Office of Alien Property, acted in accordance with law in finding that peti-

tioner is ineligible for the return of vested property under Section 207(b) or 207(c) of the International Claims Settlement Act of 1949, as amended, and in disallowing and dismissing petitioner's claim for the return of his vested property upon the ground that petitioner was a national of Rumania within the meaning of Executive Order No. 8389, as amended.

The Treaty, Statute and Executive Order Involved

The case involves:

(1) the Treaty of Peace with Rumania, 61 Stat. 1812, particularly Article 27 thereof, 61 Stat. 1813-1814;

(2) the International Claims Settlement Act of 1949, as amended on August 9, 1955 by Public Law 285, 84th Cong., 1st Sess., 69 Stat. 562, 22 U.S.C.A. § 1631, and further amended by Section 33 of Public Law 85-791, 85th Cong., 2d Sess., 72 Stat. 951, 22 U.S.C.A. § 1631 f (b), particularly §§ 202(a), and 207(a)(b)(c) thereof, 22 U.S.C.A. §§ 1631 a(a) and 1631 f(a) (b) (c); and

(3) Executive Order No. 8389, April 10, 1940, 5 F. R. 1400, as amended by Executive Order No. 8785, June 14, 1941, 6 F. R. 2897, particularly Section 5 E thereof.

The relevant provisions of the Treaty, the statute and Executive Order are set forth in the Appendix, *infra*, pages 18-22.

Statement of the Case

The petitioner filed in the Court of Appeals for the District of Columbia Circuit a petition for review of an order of the Acting Director, Office of Alien Property, finding

that petitioner is not eligible to receive a return of vested property under either Section 207(b) or Section 207(c) of the International Claims Settlement Act of 1949, as amended, 69 Stat. 564-565, 22 U.S.C.A. § 1631f(b, c), and dismissing and disallowing petitioner's claim for the return of his vested property.

The jurisdiction of the Court of Appeals for the District of Columbia Circuit was invoked under Section 207(b) of the International Claims Settlement Act of 1949, which was added to the Act by Public Law 285, 84th Cong. 1st Sess., 69 Stat. 564, 22 U.S.C.A. § 1631f(b), and thereafter amended by Section 33 of Public Law 85-791, 85th Cong. 2nd Sess., 72 Stat. 951.

This statutory provision authorizes the Court of Appeals for the District of Columbia Circuit to review an order of the Acting Director, Office of Alien Property, dismissing and disallowing a claim for the return of property vested pursuant to Section 202(a) of the Act, 22 U.S.C.A. § 1631a.

Article 27 of the Treaty of Peace with Rumania, which was concluded on February 10, 1947, and came into force on September 15, 1947, authorizes the United States to vest blocked property within the United States belonging to Rumania or to Rumanian nationals. Section 5(c) of Article 27, however, expressly states that the property which may be vested "shall not include" the "[p]roperty of natural persons permitted to reside within" the United States "or to reside elsewhere in United Nations territory." The Department of State interpreted Section 5(c) as applicable to Rumanian nationals who, on the date of the signing of the treaty, were permitted to sojourn within the country in which the property is located (R.[1] 4-5).

---

[1] "R" refers to the record certified to this Court by the Clerk of the Court of Appeals. "Tr" refers to the transcript of the record of proceedings in the Office of Alien Property certified to the Court of Appeals.

The petitioner, who was born in Rumania on December 10, 1884, had left that country on June 17, 1946, and on September 29, 1946 had entered the United States where he has since resided (R. 2). His Rumanian citizenship was rescinded on September 30, 1948, by a decree of the Rumanian Government, and he thereupon became stateless (R. 2-3).

Petitioner owned all the stock of two Rumanian corporations which had substantial amounts of cash and securities on deposit in blocked accounts with Chase National Bank of the City of New York. He also had a blocked cash account with this bank which stood in his name (R. 4, 5). In addition, he had personally acquired in New York between July 17, 1940, and October 10, 1940, with Rumanian funds owned by him $90,227.86 (later reduced by bank charges to $90,006.25) through a number of financial and commercial transactions. The parties with whom he had entered into the transactions transmitted the dollar amounts to the New York Agency of the Swiss Bank Corporation, Basle, Switzerland, for the account of one of petitioner's corporations which was used by petitioner as a cloak for him in his acquisition of the dollars. In April 1944 the corporation had instructed the Swiss Bank Corporation to transfer this amount to petitioner's personal account then maintained with it, but the transfer was not made because of the then existing freezing regulations (R. 3).

On April 28, 1947, the Treasury Department unblocked approximately $1,144,142.25 in cash and securities in the accounts of the two Rumanian corporations with the Chase National Bank of the City of New York, upon a determination that, since petitioner owned all the stock of the corporations, he was the beneficial owner of the property, and that he is among a class of persons (persecutees) whose property it was the policy of the Treasury Department to unblock in view of Section 2 of Public Law 671, 79th Cong., 2d Sess. At the same time the Treas-

ury Department, unblocked approximately $27,000 in petitioner's account with the bank (R. 5, 6).[3]

Public Law 285, 84th Cong., 1st Sess., which added Sections 201-215 to the International Claims Settlement Act of 1949 was approved several years later on August 9, 1955. It provided in Section 202(a) that "[i]n accordance with * * * article 27 of the treaty of peace with Rumania" property which, as of September 15, 1947, was owned directly or indirectly by Rumania or any national thereof as defined in Executive Order No. 8389 of April 10, 1940, as amended, and remains blocked on August 9, 1955, shall vest in the officer or agency designated by the President, but that property determined to be directly owned by a natural person shall not be vested.[4]

The legislative history conclusively shows that, although Article 27 of the Treaty excluded from vesting property belonging to natural persons permitted to reside within the United States or elsewhere within United Nations territory, it was the intention of Congress, in enacting Public Law 285, that in addition property belonging to natural persons residing in Rumania should not be vested and liquidated, but that the vesting is to be limited to assets

---

[2] Public Law 671, 79th Cong., 2d Sess. added provisos to subdivisions (C) and (D) of Section 32(a) of the Trading with the Enemy Act, as amended, 50 U.S.C.A. Appendix § 32.

[3] On September 18, 1946, the Treasury Department had issued a license granting petitioner the benefits of a generally licensed national and and a license unblocking the corporate accounts with the Chase National Bank, but petitioner did not make use of these licenses and returned them.

[4] By Executive Order 10644, November 7, 1955 (20 F. R. 8363, November 9, 1955), 22 U.S.C.A. § 1631a note, the President designated the Attorney General and any Assistant Attorney General named by him to perform the functions imposed upon the President by the Act. By Order No. 106-55, November 23, 1955 (20 F. R. 8993, December 7, 1955), the Attorney General designated the Assistant Attorney General who had been theretofore named Director of the Office of Alien Property to perform the functions which had been delegated to him by the President.

belonging to the Rumanian government and Rumanian corporations or other business entities (R. 6-7; *infra*, pp. 8-12).

In 1956 petitioner submitted to the Director, Office of Alien Property, an application for a license unblocking the above-mentioned sum of $90,006.25 belonging to him, but which he had "cloaked" in the name of one of his corporations. He also submitted to the Director in April 1956 an additional application for a license unblocking $7,962 in his personal account with the Swiss Bank Corporation. Due to a mistake, these sums were not included in his application which resulted in the unblocking by the Treasury Department in 1947 of all his then known assets.

On March 22, 1957, the Director, Office of Alien Property, vested the sum of $90,006.25. On or about April 1, 1958, petitioner filed his claim for the return of this vested sum under Section 207(b) of the International Claims Settlement Act of 1949, as amended, and submitted evidence establishing his assertion in the claim that he was the real owner of the vested sum on the vesting date and that it never belonged to his corporation (Tr. pp. 2, 28-29, 39). In his answer below the respondent conceded petitioner's ownership by not denying the allegation in the petition that petitioner was the owner and by referring to the property as petitioner's property (R. 26, 27, 30).

Thereafter, on April 17, 1958, the Director issued a license unblocking the sum of $7,962 in petitioner's personal account with the Swiss Bank Corporation and authorized the bank's New York agency to pay this amount to petitioner (R. 9).

In or about July 1958, the Director, Office of Alien Property, recognized that property indirectly belonging to natural persons is excluded from vesting under the law when he issued a license unblocking in favor of Nicu Buteulescu, a national and resident of Rumania until December 30, 1947, who did not enter the United States until

1948, approximately $70,000 representing a portion of a debt of an American company owned as of September 15, 1947, directly or indirectly, by a Rumanian business entity, in which Buteulescu had an interest (R. 9; Tr. pp. 42, 49-50).

On January 23, 1963, the Acting Director, Office of Alien Property, made an order finding that petitioner is ineligible for the return of vested property under either Section 207(b) or 207(c) of the International Claims Settlement Act of 1949, as amended, and dismissing and disallowing petitioner's claim for the return of the $90,006.25. (A copy of the Order is appended hereto in the Appendix, *infra*, p. 23.)

On review, the Court of Appeals for the District of Columbia Circuit affirmed the order without opinion.[1] The judgment of affirmance referred to *Schrager-Singer* v. *Attorney General of the United States*, 106 U. S. App. D. C. 258, 271 F. 2d 841, in which Article 27 of the Peace Treaty with Rumania and the legislative history of Public Law 285, 84th Cong., 1st Sess., were not presented by either party to or discussed by the Court of Appeals.

Reasons Relied On for the Allowance of the Writ

1. The questions presented are of fundamental importance to the proper administration of the International Claims Settlement Act of 1949, as amended by Public Law 285, 84th Cong., 1st Sess.

Article 27 of the Peace Treaty with Rumania excludes from vesting the property of "natural persons permitted to reside within" the United States or "elsewhere in United Nations territory."

Senator Fulbright stated, at the Hearings on July 8, 1955 before the Senate Committee on Foreign Relations, 84th Cong., 1st Sess., which then had before it H. R. 6382 to amend the International Claims Settlement Act of 1949,

as amended, in implementation of the Treaty, that (Hearings p. 1):

> "We are meeting here this morning to give consideration to H. R. 6382, a bill to amend the International Claims Settlement Act of 1949, as amended, and for other purposes. * * * it authorizes the vesting and liquidation of blocked assets of these Governments and their nationals *other than natural persons*, * * *"

Senator Thruston B. Morton, then Assistant Secretary of State for Congressional Relations, made a statement at the hearing regarding some of the more important policy aspects of the bill which contained the following (Hearings p. 13):

> "EXCLUSION FROM VESTING PROGRAM OF PROPERTY OF NATURAL PERSONS
>
> The Department of State is of the opinion that the *property of natural persons should be excluded* from the vesting program. While the United States has the right to seize such property, it is considered undesirable to take this action; the *assets of natural persons* are relatively small in amount and we do not wish to alienate the support of friendly nationals of Bulgaria, Hungary, and Rumania or impair their faith in the United States. * * *"

The following colloquy then took place between Senator Smith and Mr. Morton:

> "Senator Smith. Mr. Morton, are those *assets of natural persons* which you are talking about now blocked?
>
> "Mr. Morton. Yes, sir, they are.
>
> "Senator Smith. Are they in the blocked funds which could be available for distribution?
>
> "Mr. Morton. That is correct, sir.

"Senator Smith. And your suggestion is that in the case of the *properties of natural persons*, as distinguished from the other assets, *you would not apply this vesting principle?*

"Mr. Morton. Those assets that *belong to the natural persons* would be retained by the Government *but not vested* in this fund to which the claimants would apply.

"The matter of release will be the subject of further study. The Department would favor release under appropriate safeguards." (Emphasis supplied.)

Mr. Morton then went on to state:

"On the other hand, the legislation provides for the vesting and liquidation not only of the assets of the Governments of Bulgaria, Hungary, and Rumania, but also of assets belonging to corporations organized under the laws of these countries. The Department of State has taken this position with respect to corporate assets, since the effective appropriation by the Governments of Bulgaria, Hungary, and Rumania of all corporate property in those countries has made it virtually impossible to determine the rights of the former beneficial owners."

Sidney Gross, then Chief, Legal and Legislative Section, Office of Alien Property, testified as follows (Hearings pp. 64-65):

* * * * * * *

"The purpose of title 2, which includes sections 201 to 215 of the bill, is in general to authorize the vesting of certain assets in the United States *owned* by Bulgaria, Hungary, or Rumania, or *by nationals* of those countries *other than natural persons.*

* * * * * * *

"Thus title 2 would place all these vested or controlled pre-war Bulgarian, Hungarian, and Rumanian proper-

ties in the same status. That is, the *property of natural persons would be kept under the blocking controls* and *other property would be diverted* to the compensation of American claimants.

"This program is *an implementation of the treaties of peace* with Bulgaria, Hungary, and Rumania, * * *." (Emphasis supplied)

In H. Rep. 624, 84th Cong., 1st Sess., which accompanied the bill, the following is found (p. 3):

"The treaty of peace with each of the three countries [Bulgaria, Hungary, Rumania] provides that the United States can seize and liquidate property in the United States *belonging* to such country or its nationals and apply the proceeds for 'such purposes as it may desire, within the limits of its claims and those of its nationals * * *' against such country.

* * * * * *

"Title taking, or vesting, is a preliminary step which must be taken by the United States Government in the case of Bulgarian, Hungarian and Rumanian blocked assets. This is necessary to enable the Government to convert these assets into dollars which will be used to pay awards. Title II of the bill provides that such liquidation will be undertaken by the President or his designee (which presumably will be the Office of Alien Property).

"In connection with this liquidation, the following three major types of determination will have to be made:

* * * * * *

"2. *Whether the property is owned by a natural person* rather than a corporation or government. *Assets of natural persons are not to be taken* under this bill. They remain blocked. *Should such assets already have been vested, they or their proceeds will be re-*

turned to blocked accounts. Thus vesting is limited to assets belonging to 1 of the 3 Governments, corporations, or other business entities." (Emphasis supplied.)

The following colloquy took place on the floor of the House between Congressman Richards, who was in charge of the legislation, and Congressmen Hale and Vorys (101 Cong. Rec., Part 7, 9107):

"Mr. Hale: • • • I am further interested in the statement that this bill does not involve the confiscation of the property of natural persons. Am I correct in that?"

• • • • •

"Mr. Vorys: I believe the gentleman is pointing out that of the assets of these three ex-enemy countries it is proposed to hold, to still block, the assets of natural citizens, and only divide up the corporate assets.

"Mr. Richards: That is correct. The gentleman states it better than I could. *The property of these individuals is not confiscated.* The property remains blocked and *whenever in the future* it is possible for the unfortunate people of Bulgaria, Hungary, and Rumania *to enjoy the right to own private property,* it is expected *this property will be returned to them.*

"Mr. Hale: I want to applaud the committee for not confiscating the property of individual nationals of these former enemy countries." (Emphasis supplied.)

The Committee Reports on the bill (1955 U. S. Code Cong. and Adm. News, p. 2746) state that:

"• • • the bill authorizes the vesting and liquidation of currently blocked assets of the Governments of Bulgaria, Hungary and Rumania and of their nationals *other than natural persons.*" (Emphasis supplied)

Manifestly, a determination of the questions presented for review will advise the Director, Office of Alien Property and the Attorney General (a) whether the Director has the authority to vest blocked assets belonging to natural persons of Rumanian nationality as defined in Executive Order No. 8389, as amended, (b) whether such natural persons who are permitted to reside within the United States or in United Nations territory are eligible for return of their vested property, and (c) whether the Director may properly determine a natural person to be ineligible for return of his vested property when such person has theretofore been determined to be a persecutee under Public Law 671, 79th Cong., 2d Sess., and the Director has unblocked other property belonging to such person. The Director will be guided thereby in his administration of the vesting program under the Act and in the determination of similar claims for the return of vested property (See, *Roboz* v. *Kennedy*, 219 F. Supp. 892).

2. The questions presented are of wide import under a treaty of the United States and a statute enacted in implementation thereof.

In *Cook* v. *United States*, 288 U. S. 102, 120 Mr. Justice Brandeis said:

> "A treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed."

This Court should determine that there is no inconsistency between Article 27 of the Treaty of Peace with Rumania and Public Law 285, 84th Cong., 1st Sess., so as to further the execution and not the violation of Article 27 of the Treaty.

3. The questions presented are of importance in the relations between the United States and Rumania.

The United States is wooing Eastern Europe toward greater independence. *The New York Times* of May 27,

1964, page 1, column 4 reported that Rumania, one of Moscow's most recalcitrant satellites, and the United States "have agreed to take a series of steps to give a new and friendly tone to their relations" and that officials in Washington "believe the Rumanian turn to the West will eventually turn out to be as significant as Yugoslavia's break with the Soviet block in 1948".

See, also, *The Wall Street Journal*, June 2, 1964, page 6, column 2.

This Court can lend its aid in improving this country's relations with Rumania by upholding the Congressional intent that blocked property belonging to natural persons of Rumanian nationality should not be vested and, as Congressman Richards put it, "whenever it is possible for the unfortunate people" of "Rumania to enjoy the right to own private property it is expected this property will be returned to them" (R. 6-7; *supra*, p. 12).

4. The Court of Appeals has decided important questions of federal law involving the construction of a treaty and a federal statute which have not been, but should be, authoritatively settled by this Court.

Although the Court of Appeals rendered no opinion, it referred in the judgment to its prior opinion in *Schrager-Singer* v. *Attorney General of the United States*, 106 U. S. App. D. C. 258, 271 F. 2d 841. But that case is not a precedent for Article 27 of the Rumanian Treaty of Peace and the legislative history of Public Law 285, 84th Cong., 1st Sess., showing the intention of Congress that blocked property of natural persons, especially those natural persons permitted to reside within the United States, should not be vested, was not presented by counsel for either party to nor discussed by the Court of Appeals. In the only other reported case, *Roboz* v. *Kennedy*, 219 F. Supp. 892, Judge Youngdahl, in holding that plaintiffs who were in Hungary on the effective date of Executive Order No.

8389, as amended, and came to the United States in 1947 were not "nationals" of Hungary within the meaning of the Order and, therefore, were entitled to sue for their vested property, did not discuss in the opinion Article 29, Section 5(c) of the Peace Treaty with Hungary, 61 Stat. 2109, 2125-2126, which is similar to Article 27, Section 5(c) of the Rumanian Treaty, or the legislative history of Public Law 285, 84th Cong., 1st Sess.

5. The Court of Appeals has decided federal questions in a way in conflict with applicable decisions of this Court.

In *Barrett* v. *Van Pelt*, 268 U. S. 85, 90, citing *Stewart* v. *Kahn*, 11 Wall. 493, 504, this Court said:

> "The intention of the lawmaker constitutes the law."

In *United States* v. *Freeman*, 3 How. 556, 565, this Court said:

> "A thing which is within the intention of the makers of the statute, is as much within the statute, as if it were within the letter."

In *Ozawa* v. *United States*, 260 U. S. 178, 194, this Court said:

> "It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

These decisions seem to have been ignored by the Court of Appeals, and its decision is at war, not only with Article 27 of the Treaty of Peace with Rumania, but also with the intent of Congress that blocked property belonging to natural persons of Rumanian nationality shall not be vested.

6. Review by this Court of the judgment of the Court of Appeals would be in the national interest and in the interest of the rule of law and in its exposition and enforcement.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

HENRY I. FILLMAN,
120 Broadway,
New York, N. Y. 10005,
Attorney for Petitioner.

APPENDIX

1. Judgment of the United States Court of Appeals for the District of Columbia Circuit.

No. 17,698

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nicolae Malaxa,

Petitioner

v.

Robert F. Kennedy,
Attorney General of the United States,

Respondent.

September Term, 1963.

UNITED STATES COURT OF APPEALS
for the District Court of Columbia Circuit

FILED MAR 6 1964

Nathan J. Paulson
CLERK

On Petition to Review Order of Acting Director, Office of Alien Property, under International Claims Settlement Act of 1949.

Before: Edgerton, Senior Circuit Judge, and Fahy and Burger, Circuit Judges.

Appendix

JUDGMENT

This case came on to be heard on the record from the Office of Alien Property, Department of Justice, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this court that the order of the Acting Director, Office of Alien Property on review herein is affirmed. See *Schrager-Singer* v. *Attorney General of the United States*, 106 U. S. App. D. C. 258, 271 F. 2d 841 (1959).

Per Curiam

Dated: MAR 6—1964

2. Treaty of Peace With Rumania, 61 Stat. 1812, 1813-1814:

* * * * * * *

Article 27

1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present treaty are within its territory and belong to Roumania or to Roumanian nationals * * *.

* * * * * * *

5. The property covered by paragraph 1 of this Article shall be deemed to include Roumanian property which has been subject to control by reason of a state of war existing between Roumania and the Allied or Associated Power having jurisdiction over the property, but shall not include:

* * * * * * *

(c) Property of natural persons who are Roumanian nationals permitted to reside within the territory of the country in which Property is located or to reside elsewhere in United Nations territory. * * *

* * * * * *

3. The International Claims Settlement Act of 1949, as amended by Public Law 285, 84th Congress, 1st Sess., 69 Stat. 562, 22 U.S.C.A. § 1631, and further amended by Section 33 of Public Law 85-791, 85th Congress, 2nd Sess., 72 Stat. 951, 22 U.S.C.A. § 1631f(b):

Sec. 202(a) [22 U.S.C.A. § 1631a], Property owned by Bulgaria, Hungary and Rumania or any national thereof—Vesting of property; liquidation; disposition of net proceeds.

(a) In accordance with * * * article 27 of the treaty of peace with Rumania, any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, and remains blocked on August 9, 1955, and which, as of September 15, 1947, was owned directly or indirectly by Bulgaria, Hungary and Rumania or by any national thereof as defined in such Executive order, shall vest in such officer or agency as the President may from time to time designate and shall vest when, as, and upon such terms as the President or his designee shall direct. * * *

Notwithstanding the preceding provisions of this subsection any such property determined by the President or his designee to be owned directly by a natural person shall not be vested under this subsection but shall remain blocked subject to release when, as, and upon such terms as the President or his designee may prescribe. If, at any time within one year from the date of the vesting of any property under this sub-

section, the President or his designee shall determine that it was directly owned at the date of vesting by a natural person, then the President or his designee shall divest such property and restore it to its blocked status prior to vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe, or if such property has been liquidated, shall divest the net proceeds thereof and carry them in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting subject to release when, as, and upon such terms as the President or his designee may prescribe. * * *

* * * * * *

Section 207 [22 U.S.C.A. § 1631f]:

* * * * * *

(b) Any person who has not instituted a suit under the provisions of subsection (a) of this section may file a notice of claim under oath for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 1631(a) of this title and held by such designee. Such notice of claim shall be filed with said designee and in such form and containing such particulars as said designee shall require. Said designee may return any property so claimed, or the net proceeds thereof, whenever he shall determine—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owners by inheritance, devise, or bequest.

Any person whose claim is finally denied in whole or in part by said designee may obtain review of such denial by filing a petition therefor in the United States Court of Appeals for the District of Columbia Circuit. Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy shall forthwith be transmitted to the said designee by the clerk of the court. Within forty-five days after receipt of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall file with the court the record of the proceedings with respect to such claim, as provided in section 2112 of Title 28. The court may enter judgment affirming the order of the designee; or, upon finding that such order is not in accordance with law or that any material findings upon which such order is based are unsupported by substantial evidence, may enter judgment modifying or setting aside the order in whole or in part and (1) directing a return of all or part of the property claimed, or (2) remanding the claim for further administrative proceedings thereon. If a notice of claim is filed under this subsection, the property which is the subject of such claim, or, if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final order of said designee or any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until a final order of said designee or a final judgment or decree shall be entered against the claimant, or the claim or suit otherwise terminated.

* * * * * *

(c) The sole relief and remedy of any person having any claim to any property vested pursuant to

section 1631a(a) of this title shall be that provided by the terms of subsection (a) or (b) of this section, and in the event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President. The claim of any person based on his ownership of shares of stock or other proprietary interest in a corporation which was the owner of property at the date of vesting thereof under section 1631(a) of this title shall be allowable under subsection (a) or (b) of this section if 25 per centum or more of the outstanding capital stock or other proprietary interest in the corporation was owned at such date by nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan. But no such claim of a national of a foreign country shall be satisfied except after certification by the Department of State that the country of the national accords protection to nationals of the United States in similar types of cases.

* * * * * *

4. Executive Order No. 8389, April 10, 1940, 5 F. R. 1400, as amended by Executive Order No. 8785, June 14, 1941, 6 F. R. 2897:

SECTION 3. The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

* * * * * *

(e) October 9, 1940—

Rumania:

* * * * * *

SECTION 5.

* * * * * *

E. The term "national" shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order.

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, * * *

* * * * * *

The Secretary of the Treasury shall have full power to determine that any person is or shall be deemed to be a "national" within the meaning of this definition, and the foreign country of which such person is or shall be deemed to be a national.

* * * * * *

5. Order of Acting Director, Office of Alien Property.

UNITED STATES OF AMERICA
DEPARTENT OF JUSTICE
OFEICE OF ALIEN PROPERTY
WASHINGTON, D. C.

In the Matter of: NICOLAE MALAXA Vesting Order Nos. SA-166 and SA-167	CLAIM NO. 66934

ORDER DISMISSING TITLE CLAIM

Pursuant to Section 502.25(i) of the Rules of Procedure for Claims of this Office (8 CFR 502.25(i)), the Chief of

the Claims Section on April 24, 1958 notified the claimant by registered mail, return receipt requested, that after the expiration of 30 days he would apply to the Director for an order dismissing the claim on the ground that the claimant was not eligible for a return of vested property under Section 207(b) of the International Claims Settlement Act of 1949 (64 Stat. 12; 22 U.S.C. 1621 et seq.), as amended by Public Law 285, 84th Congress, 1st Session (69 Stat. 562), and that, in his opinion, no favorable action with respect to the claim is possible under Section 207(b) of the Act. The claimant was further advised that within the 30-day period a statement specifying objections to the proposed dismissal might be filed, together with reasons in support thereof and that any evidence or other material in support of the claim which had not been previously filed with this Office should be filed with the statement of objections. The claimant has timely objected to the proposed dismissal of the claim and has asserted that he is eligible for a return of vested property not only under Section 207(b) but also under Section 207(c) of the Act.

Upon the application of the Chief of the Claims Unit and after considering the objections and finding that they raise no issue of fact or law under the governing statutory provisions, and further finding that the claimant is not eligible to receive a return of vested property under either Section 207(b) or 207(c) of the Act;

It is Ordered that this claim be and it is hereby dismissed and disallowed.

Dated at Washington, D. C., Jan. 23, 1963.

Joseph D. Guilfoyle
Joseph D. Guilfoyle
Acting Director, Office of Alien Property

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 150

NICOLAE MALAXA, PETITIONER

v.

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES, As Successor to the Alien Property Custodian

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The order of the Acting Director of the Office of Alien Property appears at pages 23-24 of the Petition. The court of appeals affirmed in a *per curiam* judgment without opinion (Pet. App. 17-18).

JURISDICTION

The judgment of the court of appeals was entered on March 6, 1964 (Pet. App. 17-18). The petition

for a writ of certiorari was filed on June 3, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the petitioner, admittedly a national and resident of Rumania from December 10, 1884, until June 17, 1946, was entitled, under the provisions of Section 207(b) and (c) of the International Claims Settlement Act of 1949, to a return of vested property nominally owned by a Rumanian corporation.

STATUTES AND EXECUTIVE ORDER INVOLVED

The relevant statutes and executive order appear in the Appendix, pp. 8-12, *infra*.

STATEMENT

Petitioner, a citizen and resident of Rumania during the years 1940 to 1946, filed a petition in the Court of Appeals for the District of Columbia Circuit, under Section 207(b) of the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1631), seeking review of a determination of the Acting Director of the Office of Alien Property, dated January 23, 1963, which had dismissed and disallowed a claim asserted by petitioner for the return of property (approximately $90,000)[1] which had been vested in the United States.

---

[1] About $85,000 was held by the Swiss Bank Corp. New York Agency, and about $5,000 was held by Brown Bros. Harriman & Co. The property was vested as property of N. Malaxa Societate Anonima, a Rumanian corporation.

The Act provides, in general, for the vesting by the President, or his designee, of "satellite" assets owned by Rumania, Bulgaria and Hungary or nationals thereof, which assets were blocked in accordance with Executive Order No. 8389, as amended (Note to 12 U.S.C. 95a). It is not disputed that the property was blocked in accordance with Executive Order 8389. Section 202(a) of the Act also provides that property "owned directly by a natural person" shall not be vested, and Section 207(b) establishes a procedure for the return of property to persons who are "other than * * * a national" of the satellite" countries under certain conditions.

The Acting Director of the Office of Alien Property dismissed the claim, reasoning that the Act prohibits the return of vested property to a Rumanian "national," that the claimant was a "national" within the definition of the Act, and that he had not lost his "national" status. The court of appeals, in a *per curiam* judgment, affirmed the order of the Acting Director.

ARGUMENT

1. Petitioner's basic contention in this Court is that blocked property nominally owned by a Rumanian corporation of which he was the sole stockholder could not be vested by the Director of the Office of Alien Property under Section 202(a) of the International Claims Settlement Act of 1949 since it was actually "owned directly by a natural person." Both the statute and Article 27 of the peace treaty with Rumania (61 Stat. 1812-1814) provide that property

owned directly by a natural person shall not be vested. The court of appeals correctly rejected petitioner's contention on the basis of its earlier decision in *Schrager-Singer* v. *Attorney General*, 271 F.2d 841 (C.A.D.C.), which held that this claim could not be raised in a Section 207(b) proceeding. No further review by this Court is warranted.

a. Sections 202(a) and 207(b) of the Act provide different procedures with distinguishable standards. The former section authorizes the *vesting* of blocked property under certain conditions —one of which is that the property not "be owned directly by a natural person." The latter provides for the *return* of vested property under certain conditions—and those conditions do not include return merely because the property had been owned by a natural person at the time of vesting. The difference was a deliberate one, and, as the court of appeals observed in *Schrager-Singer*, 271 F.2d at 844-845, "* * * Congress purposely as a matter of grace granted exemption from vesting to blocked property determined to have been owned by a national who is a natural person, and just as purposely withheld that grace with respect to the return of property already vested." Petitioner is not presently challenging the vesting of the property in 1957, nor is he seeking divestment within one year of vesting as authorized by Section 202(a) He instituted this proceeding as a "claim for the return of this vested sum under Section 207(b)" of the Act (Pet. 7). That provision does not entitle him to return of the property merely on a showing that it was owned by a natural person on the date of vesting.

b. Even if the question whether the vested property was owned directly by a natural person were material in a Section 207(b) proceeding, the decision of the Director of the Office of Alien Property on that issue would be final. Section 202(c) expressly provides that the "determination * * * that any vested property was not directly owned by a natural person at the date of vesting shall be within the sole discretion of the President or his designee [*i.e.*, the Director of the Office of Alien Property] and shall not be subject to review by any court." Since the Act makes this finding final for Section 202(a) purposes, it cannot be open to collateral attack in a Section 207(b) proceeding.

c. Finally, even if the merits of the Director's finding were open to challenge in this case, it seems clear that his determination that property owned by a Rumanian corporation was not "owned directly by a natural person" was eminently justified. The legislative history set out at pages 9-13 of the Petition, particularly the language of the House Report (Pet. 11), demonstrates unequivocally that Congress intended to permit the vesting of property owned by Bulgarian, Hungarian or Rumanian corporations, apparently irrespective of the identity of their shareholders.

2. Apart from his claim that the exception of Section 202(a) applies in a Section 207(b) proceeding, petitioner does not claim expressly that he qualified for relief under Section 207(b). It seems most clear that he did not so qualify. Petitioner was a national

of Rumania within the definition provided by the Act; for the Act incorporates the terms of Executive Order 8389, under which any person who was a Rumanian national on October 9, 1940, was classified as a Rumanian national regardless of any subsequent changes of nationality. Since petitioner was a citizen and resident of Rumania until June 1946, he could not meet the first of the two qualifications prescribed by Section 207(b) for the return of vested property—*i.e.*, he could not establish that he, the claimant, was "a person other than Bulgaria, Hungary, or Rumania, or a national thereof * * *." The rule that petitioner's status in 1940 rather than his status today is determinative of his present right to have the property returned is consistent with the rule applied in cases brought under the Trading With the Enemy Act. See *Handelsvenootschap "Norma" N.V. et al.* v. *Kennedy*, 328 F.2d 529 (C.A.D.C.), certiorari denied, June 8, 1964; *N.V. Handelsbureau La Mola* v. *Kennedy*, 299 F.2d 923 (C.A.D.C.), certiorari denied, 370 U.S. 940; *Bank Voor Handel en Scheepvaart, N.V.* v. *Kennedy*, 288 F.2d 375 (C.A.D.C.), certiorari denied, 366 U.S. 962; *Kennedy* v. *Rommel*, 301 F.2d 544 (C.A.D.C.), certiorari dismissed, 371 U.S. 882; *Kennedy* v. *Christiani-Onken*, 301 F.2d 546 (C.A.D.C.), certiorari denied, 371 U.S. 828. Nor is *Roboz* v. *Kennedy*, 219 F. Supp 892 (D.D.C.), upon which petitioner relies (Pet. 14-15), relevant here. That case involved a claimant who was found to be involuntarily in a

satellite country and who enjoyed no legal rights there. Consequently, he was held not to have qualified as a "national" of that country and was permitted to recover vested property.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solticitor General.

JOHN W. DOUGLAS,
Assistant Attorney General.

MORTON HOLLANDER,
PAULINE B. HELLER,
Attorneys.

JULY, 1964.

APPENDIX

STATUTE AND EXECUTIVE ORDER INVOLVED

1. The International Claims Settlement Act of 1949, as amended (22 U.S.C. 1621, 69 Stat. 562, 72 Stat. 951) provides in pertinent part:

> Sec. 202(a) (22 U.S.C. 1631a). Property owned by Bulgaria, Hungary, and Rumania or any national thereof.
>
> (a) Vesting of property; liquidation; disposition of net proceeds.
>
> In accordance with * * * article 27 of the treaty of peace with Rumania, any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, and remains blocked on August 9, 1955, and which, as of September 15, 1947, was owned directly or indirectly by Bulgaria, Hungary, and Rumania or by any national thereof as defined in such Executive Order, shall vest in such officer or agency as the President may from time to time designate and shall vest when, as, and upon such terms as the President or his designee shall direct. * * * Notwithstanding the preceding provisions of this subsection, any such property determined by the President or his designee to be owned directly by a natural person shall not be vested under this subsection but shall remain blocked subject to release when, as, and upon such terms as the President or his designee may prescribe. If, at any time within one year from the date of the vesting of any property under this subsection, the President or his designee shall determine that it was directly owned at the date of vesting by

a natural person, then the President or his designee shall divest such property and restore it to its blocked status prior to vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe, or if such property has been liquidated, shall divest the net proceeds thereof and carry them in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

* * * *

(c) Determination of ownership by natural person of vested property.

The determination under this section that any vested property was not directly owned by a natural person at the date of vesting shall be within the sole discretion of the President or his designee and shall not be subject to review by any court.

* * * *

Section 207 (22 U.S.C. 1631f):

* * * *

(b) Notice of claim; review of denial.

Any person who has not instituted a suit under the provisions of subsection (a) of this section may file a notice of claim under oath for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 1631(a) of this title and held by such designee. Such notice of claim shall be filed with said designee and in such form and containing such particulars as said designee shall require. Said designee may return

any property so claimed, or the net proceeds thereof, whenever he shall determine—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owners by inheritance, devise, or bequest.

Any person whose claim is finally denied in whole or in part by said designee may obtain review of such denial by filing a petition therefor in the United States Court of Appeals for the District of Columbia Circuit. Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy shall forthwith be transmitted to the said designee by the clerk of the court. Within forty-five days after receipt of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall file with the court the record of the proceedings with respect to such claim, as provided in section 2112 of Title 28. The court may enter judgment affirming the order of the designee; or, upon finding that such order is not in accordance with law or that any material findings upon which such order is based are unsupported by substantial evidence, may enter judgment modifying or setting aside the order in whole or in part, and (1) directing a return of all or part of the property claimed, or (2) remanding the claim for further administrative proceedings

thereon. If a notice of claim is filed under this subsection, the property which is the subject of such claim, or, if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final order of said designee or any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until a final order of said designee or a final judgment or decree shall be entered against the claimant, or the claim or suit otherwise terminated.

(c) Exclusiveness of relief.

The sole relief and remedy of any person having any claim to any property vested pursuant to section 1631a (a) of this title shall be that provided by the terms of subsection (a) or (b) of this section, and in the event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President. The claim of any person based on his ownership of shares of stock or other proprietary interest in a corporation which was the owner of property at the date of vesting thereof under section 1631a(a) of this title shall be allowable under subsection (a) or (b) of this section if 25 per centum or more of the outstanding capital stock or other proprietary interest in the corporation was owned at such date by nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan. But no such claim of a national of a foreign country shall be satisfied except after certification by the Department of State that the country of the na-

tional accords protection to nationals of the United States in similar types of cases.

2. Executive Order 8389, as amended (12 U.S.C. 95a, note) provides in pertinent part:

SECTION 3. FOREIGN COUNTRIES AFFECTED; EFFECTIVE DATE OF PROHIBITIONS

The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

* * * *

(e) October 9, 1940—
Rumania;

* * * *

SECTION 5. DEFINITIONS

* * * *

E. The term "national" shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order,

* * * *

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